

IN THE SENATE

SENATE BILL NO. 1115

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO OPTOMETRISTS; AMENDING SECTION 54-1501, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1502, IDAHO CODE, TO PROVIDE FOR PENALTIES AND TO PROVIDE THAT AN OPTICIAN LAWFULLY PRACTICING OPTICIANRY WITHIN THE STATE IS NOT IN VIOLATION OF THE PROVISIONS OF THE CHAPTER; AMENDING CHAPTER 15, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1502A, IDAHO CODE, TO PROVIDE PENALTIES AND REMEDIES REGARDING NONLICENSED PERSONS; AMENDING SECTION 54-1503, IDAHO CODE, TO REMOVE OUTDATED LANGUAGE, TO PROVIDE QUALIFICATIONS FOR MEMBERS OF THE STATE BOARD OF OPTOMETRY AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 54-1505, IDAHO CODE, REGARDING QUALIFICATIONS FOR MEMBERS OF THE STATE BOARD OF OPTOMETRY; AMENDING SECTION 54-1509, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE BOARD, TO REMOVE A POWER AND DUTY OF THE BOARD AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1510, IDAHO CODE, TO REVISE A GROUND FOR LICENSE DISCIPLINE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-1514, IDAHO CODE, TO REMOVE CERTAIN PRINTING AND DISTRIBUTION REQUIREMENTS AND TO PROVIDE FOR AN AVAILABILITY REQUIREMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-1501, Idaho Code, be, and the same is hereby amended to read as follows:

54-1501. PRACTICE OF OPTOMETRY DEFINED. Optometry is defined as the science which relates to the examination, diagnosis and treatment of conditions of or relating to the eyes and/or eyelids, the analysis of their function and the employment of preventive or corrective measures to ~~insure~~ ensure maximum vision and comfort. The practice of optometry is declared to be a learned profession. The practice of optometry affects the public health, welfare and safety and the public interest requires regulation and control of the practice of optometry and limitation of the practice to qualified persons. The "practice of optometry" means:

(1-) To engage in the profession of examining, testing, measuring, treating, correcting, developing, or improving the human visual apparatus;

(2-) To display any sign, circular, advertisement, or device offering to examine eyes, test eyes, fit glasses, adjust frames or prescribe lenses, or by any means or method set oneself forth as an optometrist, doctor of optometry, optometric physician, optical doctor, doctor of optical

1 science, O.D., Opt. D., optician, optical specialist, eye specialist, or refractionist, or any other
2 designation of like import;

3 ~~(3-)~~ To employ in the examination, diagnosis, or treatment of another, any means,
4 including the use of diagnostic pharmaceutical agents and pharmaceutical agents for therapeutic
5 use, for the measurement, improvement, or development of any or all functions of human
6 vision or the assistance of the powers of range of human vision or the determination of the
7 accommodative or refractive status of human vision or the scope of its functions in general.
8 The state board of optometry may, pursuant to rules adopted by it, issue a certificate to
9 optometrists licensed in this state authorizing the optometrist to prescribe, administer and
10 dispense such therapeutic pharmaceutical agents for the treatment of conditions of the eye
11 and/or eyelid, as approved by the board of optometry and as identified in rules adopted by the
12 board of optometry. Such certificate shall only be issued to an optometrist who:

13 (a) ~~h~~Has successfully passed the "treatment and management of ocular disease" section
14 of the optometrist examination approved by the international association of boards of
15 examiners in optometry, inc. or an equivalent examination as may be approved by the
16 state board of optometry;

17 (b) ~~i~~Is the holder of a certificate for the use of diagnostic pharmaceutical agents issued by
18 the state board of optometry; and

19 (c) ~~h~~Has completed such appropriate additional educational and clinical experience
20 requirements as shall be established by the state board of optometry pursuant to section
21 54-1509, Idaho Code;

22 ~~(4-)~~ To remove superficial foreign bodies and to diagnose and treat superficial conditions
23 of the eye and eyelid. The practice of optometry shall not include the use of therapeutic lasers;

24 ~~(5-)~~ To sell or offer for sale, otherwise than on prescription, any lens with spherical,
25 prismatic or cylindrical power ~~for the aid of human vision~~, including plano or cosmetic contact
26 lenses;

27 ~~(6-)~~ To prescribe or adapt lenses, including contact lenses, exercises, orthoptics, vision
28 therapy, or other physical means to correct defects or adjust human vision to the conditions of a
29 special occupation; or

30 ~~(7-)~~ To do or offer to do any of the foregoing with intent of receiving therefor, either
31 directly or indirectly, any fee, gift, remuneration, or compensation whatsoever.

32 SECTION 2. That Section 54-1502, Idaho Code, be, and the same is hereby amended to
33 read as follows:

34 54-1502. LICENSE A PREREQUISITE TO PRACTICE. (1) It is unlawful for any
35 person to practice optometry unless he shall obtain a license to do so as provided in this
36 chapter.

37 (2) Any person who shall practice or attempt to practice optometry, as defined in this
38 chapter, without having at the time of so doing a valid license to practice optometry issued by
39 the state board of optometry shall be deemed guilty of a misdemeanor. Any person licensed
40 under another chapter of Idaho Code to perform these functions shall be exempt from the
41 provisions of this chapter. An optician lawfully practicing opticianry within the state of Idaho
42 is not in violation of the provisions of this chapter.

43 (3) It is a misdemeanor for an optometrist to knowingly aid or abet any person or entity
44 to practice optometry if such person or entity is not authorized by Idaho Code to practice
45 according to the provisions of this chapter.

SECTION 3. That Chapter 15, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1502A, Idaho Code, and to read as follows:

54-1502A. NONLICENSED PERSONS – PENALTIES AND REMEDIES. (1) The board may investigate any person engaged in the practice of optometry within the state of Idaho or any person believed to have acted as an optometrist without being duly licensed as required by this chapter. Upon receipt of a written complaint, the board shall perform an investigation of the facts alleged. If the board investigation reveals that the facts alleged or received are sufficient to proceed with formal action, the board may authorize the filing of an administrative complaint against the person and may seek injunctive relief prohibiting such person from engaging in the practice of optometry. In addition or alternatively, the board may refer violators of the provisions of this chapter for prosecution pursuant to section 54-1513, Idaho Code.

(2) Each violation of the provisions of section 54-1502, Idaho Code, shall, upon conviction, result in a fine in an amount not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail for not less than thirty (30) days but not more than ninety (90) days, or by both such fine and imprisonment and, in addition, shall require the payment of the cost and fees incurred in the investigation and prosecution of the violation.

SECTION 4. That Section 54-1503, Idaho Code, be, and the same is hereby amended to read as follows:

54-1503. STATE BOARD OF OPTOMETRY ESTABLISHED – QUALIFICATIONS. (1) There is hereby established in the department of self-governing agencies a state board of optometry composed of five (5) members who will serve for staggered terms of five (5) years each after the effective date of this act unless otherwise provided in this ~~act~~ chapter. ~~Sixty (60) days after the effective date of this act, the bureau of occupational licenses shall send the governor of the state of Idaho a list of ten (10) names of persons eligible to serve on the state board of optometry in the state of Idaho, nominated pursuant to the terms of this act, and the governor of the state of Idaho shall then appoint the five (5) members of the board of optometry from the list of names provided for terms of one (1), two (2), three (3), four (4) and five (5) years from the effective date of this act.~~ A vacancy in membership on the board shall occur when the regular term of a member expires or when a member dies, resigns or is removed from office by the governor. Appointments to fill a vacancy because of the expiration of a regular term provided in this ~~act~~ chapter shall be filled by the governor by appointment of a member for a five (5) year term as provided in this ~~act~~ chapter. Appointments to fill a vacancy occurring for some reason other than expiration of a term of office shall be made for the unexpired term which is being filled. The governor may remove any member of the board from membership on the board who is found by the governor to be mentally or physically incapable of acting, or to be neglecting or refusing to act, or who ceases to have the qualifications of a member as provided in this ~~act~~ chapter.

(2) Each member of the state board of optometry shall be a licensed optometrist in the state of Idaho and shall have been a resident of and lawfully practicing optometry within the state of Idaho for a period of not less than five (5) years immediately preceding his appointment.

SECTION 5. That Section 54-1505, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Section 54-1509, Idaho Code, be, and the same is hereby amended to read as follows:

54-1509. STATE BOARD OF OPTOMETRY – POWERS AND DUTIES. In order to protect the public in the practice of optometry, better enable members of the public to fix professional responsibility and further safeguard the doctor-patient relationship, the state board of optometry shall have the following powers and duties:

(1-) To make and prescribe rules for a fair and wholly impartial method of examination of candidates to practice optometry.

(2-) To make and prescribe rules defining for the optometrists what shall constitute a school, college or university or department of a university or other institution reputable and in good standing and to determine the reputability and good standing of a school, college or university or department of a university or other institution by reference to a compliance with such rules.

(3-) To make and prescribe rules to establish a standard of preliminary education deemed requisite to admission to a school, college or university and to require satisfactory proof of the enforcement of such standards by schools, colleges and universities.

(4-) To make and prescribe rules governing the relicensing of persons applying for a license to practice optometry in the state of Idaho after a failure to maintain a license for a period in excess of five (5) years.

(5-) To establish by rule the qualifications necessary to grant a license to practice optometry in Idaho by endorsement to persons licensed in other states or foreign countries.

(6-) To conduct examinations to ascertain the qualifications and fitness of applicants to practice optometry or to recognize by rule a national testing agency for the administration and grading of such test.

(7-) To make and prescribe rules governing the minimum amount and kind of continuing education in optometry to be required annually of each optometrist seeking ~~relicense~~ to renew his license to practice optometry in the state of Idaho.

(8-) To make, prescribe and promulgate rules prescribing a code of ethics and standards of professional conduct in practice for the purpose of regulating and governing the practice of optometry by licensed optometrists within the state of Idaho and to change and modify its rules or prescribe new rules in order to improve the practice of optometry for the benefit of the people of the state of Idaho.

~~(9-) To make, prescribe and promulgate rules governing the listing and identification of charges for materials and for professional services provided to members of the public by persons licensed to practice optometry in Idaho.~~

~~10-~~ To make, prescribe and promulgate rules regarding the establishment of "branch offices" in the state of Idaho by persons licensed to practice optometry.

(10) To make, prescribe and promulgate rules regarding advertising by optometrists licensed to practice in Idaho.

~~(121-)~~ (11) To make, prescribe and promulgate rules defining "gross incompetence" as grounds for suspension or revocation of an optometrist's license as provided in section 54-1510, Idaho Code.

~~(132-)~~ (12) To make, prescribe and promulgate rules governing the verification by an optometrist of the accuracy in compounding and the quality of the workmanship and

1 materials used by any person, firm or corporation in the course of filling or compounding the
2 optometrist's prescriptions for vision aids of any type prior to delivery by the optometrist.

3 ~~(143-)~~ To make, prescribe and promulgate rules governing the issuance and release of
4 prescriptions or copies of prescriptions by optometrists out of the office of the optometrist.

5 ~~(154-)~~ To make, prescribe and promulgate rules governing the type and kind of records
6 to be kept by each optometrist pertaining to all patients examined or for whom he has adapted
7 optical accessories.

8 ~~(165-)~~ To make, prescribe and promulgate such other rules required by this ~~act~~ chapter or
9 necessary or desirable for its enforcement and administration.

10 ~~(176-)~~ The state board of optometry shall have the power to administer oaths, take
11 depositions of witnesses in and out of the state of Idaho in the manner of civil cases, require
12 the attendance of such witnesses and the production of such books, records and papers as it
13 may desire at any hearing before it or deposition authorized by it, pertaining in any manner to
14 any matters of which it has authority to investigate and for that purpose the board may issue a
15 subpoena for any witness or a subpoena duces tecum to compel the production of any books,
16 records or papers directed to the sheriff of any county of the state of Idaho, where such witness
17 resides, or may be found, which shall be served and returned in the same manner as a subpoena
18 in a civil case is returned. The fees and mileage of the witnesses shall be the same as that
19 allowed in the district courts in civil cases. In any case of disobedience to, or neglect of, any
20 subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to
21 testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the
22 district court, or any judge thereof, of any county in this state in which the proceeding is held
23 upon application of the board, to compel obedience in proceedings for contempt as in the case
24 of disobedience of the requirements of any subpoena issued from such court or for refusal to
25 testify therein. The licensed person accused in such proceeding shall have the same right of
26 subpoena upon making application to the board as set out in this ~~act~~ chapter.

27 ~~(187-)~~ The state board of optometry shall have the power to hire attorneys, investigators,
28 hearing officers or other employees for carrying out the purpose of this ~~act~~ chapter or to
29 promote the interests of the profession of optometry ~~in Idaho from funds available in the fund~~
30 ~~established by this act or from any other available funds.~~

31 ~~(198-)~~ To authorize, by written agreement, the bureau of occupational licenses as agent to
32 act in its interest.

33 SECTION 7. That Section 54-1510, Idaho Code, be, and the same is hereby amended to
34 read as follows:

35 54-1510. REVOCATION OF LICENSES – GROUNDS. Every license issued under the
36 provisions of this chapter shall be subject to suspension, revocation or other discipline upon
37 any of the following grounds pursuant to the procedures set forth in chapter 52, title 67, Idaho
38 Code. All hearings conducted pursuant to this section, whether before the board or a hearing
39 officer, shall be held in Ada county unless otherwise designated by the board.

40 ~~(1-)~~ Fraud or deception in procuring license.

41 ~~(2-)~~ Practicing optometry under a false or assumed name or as a representative or agent
42 of any person, firm or corporation other than another licensed optometrist, a physician licensed
43 to practice medicine and surgery under chapter 18, title 54, Idaho Code, or a professional
44 service corporation, which has been incorporated under the authority of chapter 13, title 30,

Idaho Code, by persons licensed to practice optometry under chapter 15, title 54, Idaho Code, or licensed to practice medicine and surgery under chapter 18, title 54, Idaho Code.

(3-) Having been convicted or having received a withheld judgment or suspended sentence in this or any other state of a felony, a crime involving moral turpitude, or any act related to the qualifications, functions or duties of an optometrist.

(4-) Gross incompetency.

(5-) Inability to practice optometry with reasonable skill and safety by reason of:

(a) Mental illness; ~~or~~

(b) Physical illness including, but not limited to, physical deterioration which adversely affects cognitive, motor or perceptive skills; ~~or~~

(c) Habitual or excessive use or abuse of drugs defined in law as controlled substances, alcohol, or any other substances which impair ability; or

(d) Having a communicable, contagious or infectious disease which endangers the health of patients.

(6-) Failure to pay to the board or the bureau of occupational licenses the annual fee and to secure a renewal license, whereupon after twenty (20) days' notice by registered mail the license of such delinquent may be revoked; but the payment of such fee at or before the time of hearing, with such additional sum, not exceeding twenty-five dollars (\$25.00) as may be fixed by the board of optometry, shall excuse the default.

(7-) Any practice or behavior of a character likely to deceive or defraud the public.

(8-) Obtaining of any fee or compensation by fraud, deceit or misrepresentation.

(9-) Employing, either directly or indirectly, any suspended or unlicensed optometrist to do optometric work.

(10-) Advertising the practice of optometry in a false, misleading or deceptive manner.

(11-) Employment or use of what are known as "cappers" or "steerers."

(12-) Consistently accepting referrals that violate the laws of the state of Idaho.

(13-) For ~~willfully~~ willfully permitting or allowing or causing a person who is not a licensed optometrist or a licensed physician or surgeon to use the optometrist's prescription or optometric finding to fit contact lenses upon a person or member of the public, ~~or supply contact lenses directly to a member of the public.~~

(14-) For violation of any of the provisions of this ~~act~~ chapter or the rules or code of ethics made and promulgated by the state board of optometry, as authorized in section 54-1509, Idaho Code.

(15-) For ~~willfully~~ willfully attempting to violate, directly or indirectly, conspiring to violate, or assisting or participating in or abetting the violation of any of the provisions of this ~~act~~ chapter or the rules or code of ethics made, prescribed or promulgated by the state board of optometry pursuant to the authority granted in this ~~act~~ chapter.

(16-) Having engaged in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the licensee by the patient.

(17-) Having committed any act which constitutes a felony or has committed any act which constitutes a crime involving moral turpitude.

SECTION 8. That Section 54-1514, Idaho Code, be, and the same is hereby amended to read as follows:

54-1514. PUBLICATION OF ~~PAMPHLET CONTAINING~~ DIRECTORY AND LAW. The bureau of occupational licenses shall each year ~~print a pamphlet containing~~ make

1 available the names and addresses of all licensed optometrists of the state of Idaho and ~~a copy~~
2 ~~of this chapter and other~~ the laws applicable to the practice of optometry and ~~shall distribute a~~
3 ~~copy of such pamphlet to each licensed optometrist.~~